



SEP 03 2019

MATTHEW C. MACLEAR
T: 415-568-5200
mcm@atalawgroup.com

August 27, 2019

Via Certified Mail

Andres A. Lopez
Chief Executive Officer
Owens-Illinois Glass Container, Inc.
One Michael Owens Way
Perrysburg, OH 43551

Dan Armagost
Branch Manager
14700 W Schulte Rd
Tracy, CA 95377

C T Corporation System (C0168406)
c/o Amanda Garcia, Vivian Imperial,
Gladys Aguilera (Registered Agents)
818 West 7th Street, Suite 930
Los Angeles, CA 90017

RE: Notice of Intent to Sue for Violations of the Clean Air Act at the Owens-Brockway Glass Container, Inc., Plant #22 in Tracy, California

Dear Mr. Lopez, Mr. Armagost, and Registered Agent(s),

We are writing, on behalf of the Association of Irrigated Residents ("AIR"), to provide you with a further notice of intent to file suit for ongoing violations of the Clean Air Act ("CAA" or "Act") at the Owens-Brockway Glass Container, Inc., Plant #22, located at 14700 W Schulte Road, Tracy, California, 95377. This notice is being provided pursuant to the Clean Air Act, 42 U.S.C. § 7604(b).

Citizens are entitled to bring suit in order to enjoin violations of an emission standard or limitation under the Act. 42 U.S.C. §7604(a). In accordance with §7604(a)(1) of the Act, we are writing to notify you that, at any time sixty (60) days after this letter's postmarked date, AIR intends to file suit in federal district court to enjoin violations described below and to ensure further compliance. The CAA is a strict liability statute to which few if any defenses may be available. Additionally, AIR will seek recovery of attorney fees and costs, and any other appropriate relief. Accordingly, we encourage and welcome early dialogue between the parties to attempt to resolve these deficiencies as early as possible.

I. Violations of Emissions Control and Emissions Requirements Contained in the Owens-Brockway Glass Container, Inc., Plant #22 Title V, Federal Operating Permit

The glass-melting furnaces at Owens-Brockway Glass Container, Inc. Plant #22 ("Owens-Brockway") have repeatedly violated and continue to violate provisions in Owens-Brockway's Title V permit to operate pertaining to regulations of emissions and emissions control equipment.

Your Furnaces A, B, and C have repeatedly violated, and continue to violate, federal opacity and CO (carbon monoxide) limits aimed at protecting public health and the environment. Opacity is a measure of the amount of soot and/or particulate matter emitted in a smokestack's gas stream over a specified time period. This measurement is used to ensure compliance with emission standards for particulate matter

("PM"). Particulate matter is a mixture of small particles, including organic chemicals, metals, and ash, which can cause health and environmental problems. Once inhaled, PM can cause serious health problems, especially in the heart and lungs. 52 Fed. Reg. 24663 (July 1, 1987).

Numerous scientific studies have linked particulate matter exposure to increased respiratory symptoms, such as irritation of the airways; coughing and difficulty breathing; decreased lung function; aggravated asthma; development of chronic bronchitis; irregular heartbeat; heart attacks; and premature death in people with heart or lung disease. Additionally, PM can be carried long distances and may result in acidic lakes and streams, nutrient imbalances in aquatic systems, and damage to forests and farmlands.

San Joaquin Valley Air Pollution Control District Rule 4101, as incorporated into the State Implementation Plan ("SIP") and Owens-Brockway's Title V permit, states that "[a] person shall not discharge into the atmosphere from any single source of emission whatsoever, any air contaminant, other than uncombined water vapor, for a period or periods aggregating more than three (3) minutes in any one (1) hour which is: (5.1) As dark or darker in shade as that designated as No. 1 on the Ringelmann Chart, as published by the United States Bureau of Mines. (5.2) Of such opacity as to obscure an observer's view to a degree equal to or greater than the smoke described in Section 5.1 of this rule." (District Rule 4101, Section 5.) These limits are incorporated into California's State Implementation Plan ("SIP") (40 C.F.R. § 52.220 et seq.) and Owens-Brockway's Title V Operating Permit (Units N-593-13-12, Condition 51; N-593-10-16, Condition 52.)

San Joaquin Valley Air Pollution Control District Rule 4354, as incorporated into the SIP and Owens-Brockway's Title V permit, states that "the operator of any glass furnace shall not operate a furnace in such a manner that results in such a way that results in CO or VOC emissions exceeding" 300ppmv at 8% O₂ or 1.0 lb-CO/ton glass produced. (District Rule 4354, Section 5.2.) These limits are incorporated into California's State Implementation Plan ("SIP") (40 C.F.R. § 52.220 et seq.) and Owens-Brockway's Title V, Federal Operating Permit (Title V Permit Unit: N-593-12-14, Condition 25.)

Your Furnaces A, B, and C continuously operate outside District requirements to channel exhaust through functioning emissions control systems. San Joaquin Valley Air Pollution Control District Rule 4354, as incorporated into the SIP and Owens-Brockway's Title V permit, always requires functioning emissions control systems—such as electrostatic precipitators (controlling for PM) and SO_x scrubbers—except during startup and idling when technologically infeasible, or during control system maintenance. (See Rule 4354 Section 5.5, 5.6, 5.7, 5.10.) These limits are incorporated into California's SIP (40 C.F.R. § 52.220 et seq.) and Owens-Brockway's Title V Operating Permit (Units N-593-12-14, Condition 7; N-593-13-12, Condition 7; N-593-10-16, Condition 7.)

We are notifying you of a total of **891** separate violations of your Title V Permit(s) at the Owens-Brockway Glass Container Plant between January 2015 and March 2019.

- Emissions at Furnace A violated opacity limits 27 times.
- Emissions at Furnace B violated opacity limits 209 times.
- Emissions at Furnace C violated opacity limits 509 times.
- Opacity emissions unattributed to any Furnace but reported as violations of the "Facility Wide" permit occurred 80 times.
- Emissions at Furnace A violated CO limits 9 times.

- Furnace A exhaust bypassed emissions control systems (electrostatic precipitator and SOx scrubber) 25 times.
- Furnace B exhaust bypassed emissions control systems (electrostatic precipitator and SOx scrubber) 14 times.
- Furnace C exhaust bypassed emissions control systems (electrostatic precipitator and SOx scrubber) 18 times.

Each instance noted above constitutes a separate actionable violation of Owens-Brockway's Title V Permit.

A chart summarizing the number of violations per unit can be found in **Attachment A**. Unless and until these violations cease, they will continue to harm the health, aesthetic, and economic interest of AIR and its members. These violations are ongoing, and the harm is traceable to the violations. Redressing the violations will redress the harm.

II. Offer to Review Information

To the extent that you have evidence that shows, contrary to the allegations in this letter, that Owens-Brockway is in full compliance with applicable requirements, we urge you to provide it to us so that we may potentially avoid, or at least limit, litigation of these issues.

III. Conclusion

AIR intends to file suit to enjoin the violations described above and to ensure future compliance, recover attorney fees and costs of litigation, and obtain other appropriate relief. We would be happy to discuss the allegations in this notice and look forward to hearing from you if you believe any of the foregoing information to be in error, wish to discuss the exchange of information consistent with the suggestion above, or would otherwise like to discuss settlement or any aspect of this matter prior to initiation of litigation. Please contact AIR through its counsel, Matthew Maclear, at (415) 568-5200.

Respectfully,

A handwritten signature in dark ink, appearing to read "Matthew Maclear".

Matthew C. Maclear
AQUA TERRA AERIS LAW GROUP

Copy To:

Andrew Wheeler
Administrator
Environmental Protection Agency
Office of the Administrator, 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Mike Stoker
Region 9 EPA Administrator
75 Hawthorne St.
San Francisco, CA 94105

Richard Corey
Executive Officer
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Governor Gavin Newsom
1303 10th Street, Suite 1173
Sacramento, CA 95814

Shawn T. Cobb
Latham & Watkins LLP
12670 High Bluff Drive
San Diego, California 92130

ATTACHMENT A

Furnace A

Furnace A (N-593-12-14)					
CEMS Reporting					
Year	Quarter	Type	Standard	Duration (Hours)	Violations
2015	1	Opacity	3 min/hour over 20% - PTO #52	0.08	1
2017	2	Opacity	3 min/hour over 20% - PTO #52	0.5	10
2017	4	Opacity	3 min/hour over 20% - PTO #52	0.78	15
2019	1	Opacity	3 min/hour over 20% - PTO #52	0.07	1
Total Opacity Violations:					27

Furnace A			
Reports of Required Monitoring & Breakdown/Deviation Reports			
Deviation #	Date	Violation Description	Violations
N-2015-2-3	2/23/2015	Exceeded CO emissions limit - PTO #25	1
N-2015-10-14	10/24/2015	Exceeded CO emissions limit - PTO #25	1
N-2016-12-18	12/28/2016	Exceeded CO emissions limit - PTO #25	1
N-2017-2-1	2/6/2017	Exceeded CO emissions limit - PTO #25	1
NOV # 43352	7/24/2014	Exceeded CO emissions limit - PTO #25	1
N-2018-2-10	12/14/2017	Exceeded CO emissions limit - PTO #25	1
N-2018-4-28	2/1/2018	Exceeded CO emissions limit - PTO #25	1
N-2018-5-14	11/23/2017 & 11/27/2017	Exceeded CO emissions limit - PTO #25	1
N-2018-5-16	11/23/2017 & 11/27/2017	Exceeded CO emissions limit - PTO #25	1
N-2015-2-3	1/31/2015	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2015-6-12	6/25/2015	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2015-7-19	7/23/2015	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2015-8-10	8/23/2015	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2015-11-7	10/31/2015	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2015-11-18	11/17/2015	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2015-12-16	12/11/2015	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2016-1-10	1/11/2016	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2016-1-11	1/12/2016	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2016-1-12	1/19/2016	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1

Furnace A

N-2016-3-7	8/23/2016	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2016-8-11	8/8/2016	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2016-10-8	10/21/2016	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2016-10-10	10/23/2016	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2016-11-21	11/20/2016	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2017-1-8	1/10/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2017-1-13	1/16/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2017-2-8	2/16/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2017-2-14	2/24/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2017- 5-4	4/14/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2017-8-14	7/7/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2017-8-15	7/9/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2018-2-4	11/13/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2018-5-25	4/9/2018	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2018-5-26	4/11/2018	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
Total Bypass Violations			25
Total CO Emissions Violations			9

Furnace B

Furnace B (N-593-13-12) CEMS Reporting					
Year	Quarter	Type	Standard	Duration (Hours)	Violations
2015	1	Opacity	3 min/hour over 20% - PTO #52	0.28	5
2015	3	Opacity	3 min/hour over 20% - PTO #52	0.07	1
2015	4	Opacity	3 min/hour over 20% - PTO #52	0.12	2
2016	1	Opacity	3 min/hour over 20% - PTO #52	7	140
2017	1	Opacity	3 min/hour over 20% - PTO #52	0.23	4
2017	2	Opacity	3 min/hour over 20% - PTO #52	0.3	6
2017	3	Opacity	3 min/hour over 20% - PTO #52	1.02	20
2017	4	Opacity	3 min/hour over 20% - PTO #52	0.06	1
2018	1	Opacity	3 min/hour over 20% - PTO #52	0.18	3
2018	4	Opacity	3 min/hour over 20% - PTO #52	1.35	27
Total Opacity Violations:					209

Furnace B Reports of Required Monitoring (RRM) & Breakdown/Deviation Reports			
Deviation #	Date	Violation Description	Violations
N-2015-2-2	1/31/2015	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2015-2-3	1/31/2015	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2016-1-12	1/19/2016	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2016-5-15	5/25/2016	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2017-1-23	1/19/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2017-1-27	1/30/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2017-2-10	2/16/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2017-8-9	7/5/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2017-9-9	7/16/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2017-9-10	7/14/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
From RRM	8/11/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2018-2-11	12/19/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2018-5-21	3/10/2018	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
N-2018-5-24	4/1/2018	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	1
Total Bypass Violations:			14

Furnace C

Furnace C (N-593-10-16) CEMS Quarterly Reports					
Year	Quarter	Type	Standard	Duration (Hours)	Violations
2015	1	Opacity	3 min/hour over 20% - PTO #52	0.07	1
2015	3	Opacity	3 min/hour over 20% - PTO #52	0.45	9
2015	4	Opacity	3 min/hour over 20% - PTO #52	0.42	8
2017	3	Opacity	3 min/hour over 20% - PTO #52	1.35	27
2017	4	Opacity	3 min/hour over 20% - PTO #52	0.4	8
2018	1	Opacity	3 min/hour over 20% - PTO #52	0.33	6
2018	3	Opacity	3 min/hour over 20% - PTO #52	7.1	142
2019	1	Opacity	3 min/hour over 20% - PTO #52	0.08	1

Opacity Violations from CEMS Reporting: 202

Furnace C Reports of Required Monitoring (RRM) & Breakdown/Deviation Reports				
Deviation #	Date	Violation Description	Duration (Hours)	Violations
N-2015-1-17	1/24/2015	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2015-2-2	1/31/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2015-2-3	1/31/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2015-2-8	2/8/2015	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2015-3-37	3/29/2015	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2015-7-2	7/5/2015	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2016-1-12	1/19/2016	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2016-5-15	6/4/2016	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2017-5-24	5/1/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1

Furnace C

N-2016-6-5	6/4/2016	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2016-10-11	10/24/2016	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
# N-2016-11-22	11/26/2016	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2017-2-6	2/12/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2017-2-13	2/24/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2017-8-16	7/6/2017; reported 8/25/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2017-10-27	10/16/2017	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2018-26	1/22/2018	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2018-5-24	4/1/2018	Exhaust bypassed functioning EP & SOx scrubber - PTO #7	N/A	1
N-2018-9-39	9/3/2018	3 min/hour over 20% - PTO #52	15 Hours	300
N-2018-12-3	12/1/2018	3 min/hour over 20% - PTO #52	0.28	5
N-2019-1-7	12/25/2018	3 min/hour over 20% - PTO #52	0.14	2

Total Bypass Violations: 18

Opacity Violations from RRM Reporting: 307

10